

AMENDED IN SENATE JUNE 12, 2006

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2343

**Introduced by Committee on Agriculture (Matthews (Chair),
Maze (Vice Chair), Canciamilla, Cogdill, Parra, Salinas, and
Vargas)**

February 23, 2006

An act to amend Sections 61384, 62095.1, 62521, 62560, 62561, 62563, 62564, and 62574 of the Food and Agricultural Code, relating to milk.

LEGISLATIVE COUNSEL'S DIGEST

AB 2343, as amended, Committee on Agriculture. Milk producers' security trust fund.

Existing law confers upon the Secretary of Food and Agriculture the ability to establish and administer the Milk Producers Security Trust Fund to protect producers against loss of payment for bulk milk. Existing law provides that security charges may be collected by the secretary until he or she determines that the value of the fund approximates 110~~percent~~% of the dollar amount of the total purchases of milk being paid for and received in one month by the handler with the largest payment obligation to producers for that month.

This bill would instead provide that security charges shall only be collected until January 1, 2007, and that the fund cash shall be maintained at \$30,000,000. If the fund cash falls below \$30,000,000, the secretary may resume collecting security charges in order that the

fund cash is maintained at that level. This bill would also provide that if in any month 110% of a handler's average monthly milk purchases exceed \$30,000,000 the secretary shall require that handler to provide acceptable securities, as defined. This bill would provide that when acceptable securities in the required amount, as specified, are provided, the secretary shall not collect security charges from that handler. This bill would provide that shipments to handlers who fail to provide acceptable securities will be listed as ineligible for coverage under the fund.

Existing law specifies the amount of security charges in mills per pound of product each handler is obligated to pay into the Milk Products Security Trust Fund.

This bill would decrease the mills per pound paid by handlers, as specified.

Existing law provides that any handler subject to any milk pooling plan, as specified, that receives milk that is not subject to the calculation of producer prices, as specified, shall be obligated to pay the security charges for any portion of that milk that is assigned to class 1, class 2, and class 3 usage.

This bill would change these provisions to also include milk that is assigned to class 4a and class 4b usage.

Existing law provides that any handler receiving milk that is not subject to any pooling plan, as specified, shall be obligated to remit security charges for class 1, class 2, and class 3 products, and may deduct the security charges from the minimum prices to be paid to producers.

This bill would change these provisions to also include class 4a and 4b products.

Existing law makes it unlawful for any retailer, and other specified entities to sell milk, cream or any dairy products at less than cost. Existing law further provides that it is unlawful for a handler to directly or indirectly pay less than the minimum producer price established under the applicable stabilization and marketing plan.

This bill would provide that these prohibitions do not apply to sales of bulk milk between handlers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *Section 61384 of the Food and Agricultural*
2 *Code is amended to read:*

3 61384. (a) The sale by any retailer, wholesale customer,
4 manufacturer, or distributor, including any producer-distributor
5 or nonprofit cooperative association acting as a distributor, of
6 milk, cream, or any dairy product at less than cost is an unlawful
7 practice. *This subdivision applies to finished products, and does*
8 *not apply to sales of bulk milk between handlers.*

9 (b) For the purposes of this section, the following terms have
10 the following meanings:

11 (1) “Cost,” as applied to manufacturers and distributors, means
12 the total consideration paid or exchanged for raw product, plus
13 the total expense incurred for manufacturing, processing,
14 handling, sale, and delivery.

15 (2) “Cost,” as applied to wholesale customers, means the
16 invoice price charged to the wholesale customer, or the expense
17 of replacement, whichever is lower, plus the wholesale
18 customer’s cost of doing business.

19 (3) “Cost of doing business,” as applied to wholesale
20 customers, means a wholesale customer’s total operating expense
21 divided by the customer’s total sales income.

22 (4) (A) Except as provided in subparagraph (B), “total
23 consideration paid or exchanged for raw product,” in the case of
24 market milk or market cream, means the applicable minimum
25 price of the market milk or market cream, if any, payable by
26 distributors to producers pursuant to stabilization or marketing
27 plans in effect pursuant to Chapter 2 (commencing with Section
28 61801).

29 (B) Notwithstanding subparagraph (A), in situations involving
30 sales on a bid basis to public agencies or institutions, the
31 definition in subparagraph (A) shall only apply to market milk or
32 market cream that is utilized for class 1 purposes, as those
33 purposes are defined in Chapter 2 (commencing with Section
34 61801).

35 (c) Proof of cost, based on audits or surveys conducted in
36 accordance with generally accepted accounting principles as
37 defined by the American Institute of Certified Public
38 Accountants and the Financial Accounting Standards Board, and

1 modified, if necessary, to satisfy the requirements of this section,
2 shall establish a rebuttable presumption of that cost at the time of
3 the transaction of any sale. This presumption is a presumption
4 affecting the burden of proof, but it does not apply in a criminal
5 action.

6 (d) Nothing in this section shall be deemed to prohibit any of
7 the following activities:

8 (1) The meeting, in good faith, of a lawful competitive price or
9 a lawful competitive condition.

10 (2) A distributor's action in making conditional sales of
11 equipment or other property, extending credit for merchandise
12 purchased, or paying a customer's obligations not otherwise
13 prohibited by this chapter to another distributor in connection
14 with the transfer of the customer's business from the latter to the
15 former.

16 (e) The secretary shall establish, by regulation pursuant to
17 Section 61341, the procedures which shall be used to make the
18 determinations required by this section, including the following:

19 (1) Any modifications to the generally accepted accounting
20 principles described in subdivision (c) necessary to satisfy the
21 requirements of this section.

22 (2) Procedures for evaluating efforts to meet lawful
23 competitive prices or conditions.

24 (3) Other procedures necessary or appropriate to facilitate the
25 application or enforcement of this section.

26 *SEC. 2. Section 62095.1 of the Food and Agricultural Code is*
27 *amended to read:*

28 62095.1. The payment by a handler, either directly or
29 indirectly, of less than the minimum producer price established
30 under the applicable stabilization and marketing plan adopted
31 pursuant to this chapter, is an unlawful trade practice. *This*
32 *section does not apply to sales of bulk milk between handlers.*

33 **SECTION 1.**

34 *SEC. 3. Section 62521 of the Food and Agricultural Code is*
35 *amended to read:*

36 62521. For purposes of this chapter, the following terms
37 mean:

38 (a) "Acceptable security" means a surety bond from an
39 admitted surety insurer, deposits of government securities, a cash
40 deposit, a letter of credit, escrow account, or other form of

1 performance guarantee acceptable to the secretary and meeting
2 the requirements as acceptable security pursuant to law. Letters
3 of credit used as acceptable security shall contain provisions the
4 secretary may prescribe, shall name the secretary as the
5 beneficiary of the letter of credit, shall be clean and irrevocable,
6 and shall provide that the secretary may draw upon it up to the
7 total amount in the event of a handler payment default. Any
8 instrument offered by a handler as acceptable security shall be
9 effective and enforceable by the secretary for a term of not less
10 than 12 months.

11 (b) "Board" means the Milk Producers Security Trust Fund
12 Board.

13 (c) "Covered milk" means milk that would, in the event of a
14 default in payment by the purchasing handler, qualify for
15 coverage under Article 5 (commencing with Section 62580) of
16 Chapter 2.5 of Part 3.

17 (d) "Fund" means the Milk Producers Security Trust Fund
18 created pursuant to Section 62506.

19 (e) "Fund cash" means the combined value of the security
20 charges collected pursuant to Section 62561 and any increments
21 received pursuant to Section 62573.

22 (f) (1) Except as provided in paragraph (2), "fund surplus"
23 means the portion of fund cash at any particular time that consists
24 of increments received by the fund pursuant to Section 62573.

25 (2) If payment of producer claims pursuant to Article 7
26 (commencing with Section 62620) reduces the fund cash to thirty
27 million dollars (\$30,000,000), "fund surplus" shall thereafter
28 mean the amount by which the fund cash exceeds thirty million
29 dollars (\$30,000,000).

30 (g) "Handler" means any person who as owner, agent, broker,
31 or intermediary, either directly or indirectly, receives, purchases,
32 or otherwise acquires ownership, possession, or control of milk
33 in unprocessed or bulk form from a producer or a
34 producer-handler for the purpose of manufacturing, processing,
35 selling, or other handling. It includes cooperative associations
36 that, either directly or indirectly, receive, purchase, or otherwise
37 acquire ownership, possession, or control of milk from other
38 handlers or producers who are nonmembers of the cooperative.

39 (h) "Milk" means bulk whole milk, bulk lowfat milk, bulk
40 skim milk, bulk condensed skim, and bulk cream, and any other

1 combination of these products which have not had nondairy
2 ingredients added. It does not include milk which has been
3 packaged in bottles, cartons, dispenser cans, or other consumer
4 packages.

5 (i) "Producer" means any person that produces milk from five
6 or more cows whose bulk milk is received, acquired, or handled
7 by a handler. It includes the nonprofit cooperative associations
8 described in Article 3 (commencing with Section 61871) of
9 Chapter 2 in the sale of milk of its member producers to other
10 handlers.

11 ~~SEC. 2.~~

12 *SEC. 4.* Section 62560 of the Food and Agricultural Code is
13 amended to read:

14 62560. (a) The security charges provided for in Section
15 62561 shall be collected until January 1, 2007. Unless otherwise
16 permitted by this section, the secretary shall thereafter
17 discontinue collection of the security charges. The fund shall
18 consist of the security charges collected, the value of any
19 alternative financial instrument, and acceptable securities
20 provided by handlers pursuant to subdivision (c).

21 (b) If, after January 1, 2007, payment of producer claims
22 reduces the fund cash below thirty million dollars (\$30,000,000),
23 the secretary may resume collecting security charges in order that
24 the fund cash is thereafter maintained at thirty million dollars
25 (\$30,000,000). Security charges necessary to return the fund cash
26 to thirty million dollars (\$30,000,000) shall, subject to
27 subdivision (c), be collected from all handlers making purchases
28 of milk, including handlers who have posted acceptable securities
29 pursuant to subdivision (c).

30 (c) If, in any month, 110 percent of any handler's average
31 monthly milk purchases, computed over the preceding 12
32 months, exceeds the fund cash as of the end of that month, the
33 secretary shall require that handler to provide acceptable
34 securities in an amount equal to the difference between the fund
35 cash and 110 percent of that handler's average monthly milk
36 purchases. When handlers have provided acceptable securities
37 covering the difference, the secretary shall not collect security
38 charges from those handlers for the portion of their average
39 monthly milk purchases covered by acceptable securities.
40 Shipments to handlers failing to provide acceptable securities, as

required by this subdivision, shall be listed by the secretary as ineligible for coverage under the fund pursuant to Section 62586.

(d) In consultation with the Milk Producers Security Trust Fund Advisory Board, the secretary may consider and use alternative financial instruments, in addition to, or in lieu of, using security charges to meet the financial security requirements of this section.

~~SEC. 3.~~

SEC. 5. Section 62561 of the Food and Agricultural Code is amended to read:

62561. (a) The following security charges shall be in effect for any period for which the secretary has implemented collections under this chapter:

(1) (A) One and seven-tenths mills per pound (\$0.0017) for class 1 fat.

(B) Nine-tenths mills per pound (\$0.0009) for class 1 solids-not-fat.

(C) One-tenth mill per pound (\$0.0001) for class 1 fluid.

(2) (A) Three and two-tenths mills per pound (\$0.0032) for classes 2, 3, 4a, and 4b fat.

(B) One and three-tenths mills per pound (\$0.0013) for classes 2, 3, 4a, and 4b solids-not-fat.

(b) The secretary shall add the security charges to the prices established for all classes of milk in accordance with Chapter 2 (commencing with Section 61801). The secretary is only authorized by this article to collect security charges on covered milk.

~~SEC. 4.~~

SEC. 6. Section 62563 of the Food and Agricultural Code is amended to read:

62563. Any handler subject to any pooling plan in effect under Chapter 3 (commencing with Section 62700) shall continue to be obligated for the minimum prices provided for in the stabilization and marketing plans on the pooled usage of the handler. However, any part of the minimum prices that is attributable to the security charges established pursuant to Section 62561 shall be deducted before producer prices are determined under the pooling plan.

Any handler subject to the pooling plan that receives milk that is not included in the calculation of producer prices determined

1 under the pooling plan shall be obligated to pay the security
2 charges established pursuant to Section 62561 for any portion of
3 that milk that is assigned to class 1, class 2, class 3, class 4a, and
4 class 4b usage.

5 The amount of any handler's obligation attributable to the
6 security charges established pursuant to Section 62561 shall be
7 remitted by the secretary to the fund by the end of the month
8 following the month the pool calculations were completed.

9 ~~SEC. 5.~~

10 *SEC. 7.* Section 62564 of the Food and Agricultural Code is
11 amended to read:

12 62564. Any handler receiving milk not subject to any pooling
13 plan in effect pursuant to Chapter 3 (commencing with Section
14 62700) shall be obligated to remit to the secretary any security
15 charges in effect pursuant to Section 62561 for class 1, class 2,
16 class 3, class 4a, and class 4b products produced from the milk
17 and may deduct the security charges from the minimum prices
18 required to be paid to producers.

19 ~~SEC. 6.~~

20 *SEC. 8.* Section 62574 of the Food and Agricultural Code is
21 amended to read:

22 62574. Immediately following the semiannual payment to the
23 fund of the increment provided in Section 62573, if the secretary
24 determines that there is a fund surplus, the secretary shall transfer
25 an amount equal to the fund surplus to an account administered
26 by the Dairy Marketing Branch of the department to be used to
27 reduce the producer and handler assessments that would
28 otherwise be imposed pursuant to Article 14 (commencing with
29 Section 62211) of Chapter 2. One-half of the fund surplus so
30 transferred shall be used to reduce the obligation of producers
31 and one-half shall be used to reduce the obligation of handlers
32 pursuant to that article.